

Residential Tenancies Tribunal

Decision 19-063-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:45 am on 14 February 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The tenants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated. They were represented by [REDACTED].

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$1548.19,
 - An order for compensation for cleaning costs in the amount of \$92.96,
 - Authorization to retain the security deposit of \$500.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision are sections 10 and 47 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. Tenant2 was not served with notice of the hearing. Furthermore, although the landlord had indicated on her application that she was seeking compensation for

damages, she failed to provide tenant1, when she was served, with any indication or breakdown of what the alleged damages were. I informed the tenants at the hearing that the landlord had not met the necessary notice requirements but they both waived their right to proper notice and they requested that the hearing proceed as scheduled.

7. The landlord called the following witness:

- [REDACTED]

8. The tenants called the following witnesses:

- [REDACTED]
- [REDACTED]

Issue 1: Compensation for Damages - \$1548.19

Relevant Submissions

The Landlord's Position

9. The landlord and tenants entered into a monthly rental agreement commencing 08 September 2017 and a copy of that executed agreement was submitted at the hearing (MP #1). The agreed rent was set at \$1150.00 per month and it is acknowledged in the rental agreement that the tenants had paid a security deposit of \$500.00.
10. On 11 September 2018 the landlord issued the tenants a termination notice. The tenants vacated the unit on 16 September 2018 and the landlord gained possession of the property on the following day.
11. When the tenancy began, the landlords and the tenants conducted an inspection of the unit and a copy of the inspection report (PS #3) was submitted at the hearing. No walkthrough was carried out when the tenancy ended and the outgoing section of the condition report was never filled out by the parties.
12. The landlord stated that after the tenants moved out, she discovered that the tenants had caused significant damage to the rental property and it had not been adequately cleaned. At the hearing she stated that she was seeking compensation for cleaning the interior of the unit as well as the back deck and she is seeking compensation for painting and plastering, repairing the dishwasher, repairing the cupboard doors in the kitchen, repairing a window screen, replacing weather stripping and replacing a door knob in the bathroom.

Back Deck

13. The landlord stated that the tenants had kept pet dogs at the rental unit and instead of bringing them out to the yard they had allowed them to urinate and defecate on the back deck. In support of that claim the landlord submitted a

photograph, which she stated was taken on 07 September 2018, showing that there was a piece of dog feces on that deck (MP #9).

14. The landlord stated that after the tenants vacated she was required to clean the deck using a pressure washer and she submitted further photographs showing the cleaning in progress (MP #10, #11). She pointed out that there was a buildup of dirt on the deck and what appears to be green-coloured mildew. Her witness, [REDACTED], corroborated her claim that the deck was dirty and he stated that there was a "stink" of dog urine and feces on that deck.
15. The landlord also complained that the tenants had nailed 2 boards across the gate to the deck. She stated that after the tenants vacated she had to remove the gate to take these boards off and she also complained that the gate was no longer square and she also had to install some brackets to rectify that problem. The landlord submitted 4 photographs showing the 2 boards nailed into the gate (MP ##12-15).
16. The landlord stated that it took her 4 hours to pressure-wash the deck and a further 2 hours to remove the 2 boards from the gate, install the brackets and reinstall the gate.

Cleaning

17. The landlord stated that the rental unit had not been adequately cleaned after the tenants vacated. She stated that all the walls and baseboards had to be washed down, that the countertops in the kitchen were not cleaned and she had to clean out the cupboards. She also claimed that the floors had to be mopped and she stated that she found some crystalized dog urine on the floor in front of the bathroom. In support of her claim, the landlord submitted a photograph (MP #18) showing that there was some sort of liquid spilled on a wall and 2 additional photographs (MP #26, #27) showing that some window curtains had some marks on them.
18. The landlord testified that she had spent approximately 12 hours cleaning the rental unit after the tenants vacated and she also claimed that she had to hire a cleaner to carry out some further cleaning as she had to take care of her young child. She submitted an invoice at the hearing (MP #59) showing that she was charged \$60.00 by the cleaner on 14 November 2018 and receipts (MP ##60-62, #66) showing that she had paid \$32.96 in cleaning supplies.
19. The landlord also stated that the tenants had left behind some of their personal possessions at the unit which she had to dispose of. She submitted photographs of those items at the hearing (MP ##19-24) as well as an affidavit she had filed with this Section (MP #25). The landlord was given permission by both the Director of Residential Tenancies and by the tenants themselves to dispose of these items. They included some cases of empty beer bottles and brake pads left in a closet, an inflatable dinghy, a trampoline set, a bucket and a child's toy cart.

Plastering and painting

20. The landlord stated that the rental unit was 4 years old and was newly painted 4 years ago. In 2017, when the tenants moved in, the landlord also repainted 2 walls in the main living area.
21. The landlord stated that after the tenants moved she had to do some plastering and she was required to repaint the entire main living area and she had to do some touch-ups in the master bedroom. This was corroborated by her witness, [REDACTED]. He stated that there were nicks and scratches on almost all the walls and baseboards in the unit after the tenants moved out.
22. In support of her claim, the landlord submitted photographs showing the areas of the rental unit where there were chips and scratches on walls and trims as well as photographs showing some minor plastering the tenants had carried out (MP ##33-57). The landlord attributed some of the damage to the tenants' dogs and she claimed that some of the other damage was the result of the tenants' affixing things to the walls. In particular, she pointed out that she had an agreement with the tenants that they would not mount their television to the wall in the living room but she claimed that they had violated that agreement and she pointed to the photographs (MP #38, #43) showing holes in the wall and chips in the paint where the television had been.
23. The landlord stated that she carried out the plastering and repainting herself and she calculated that this work took her 17.5 to complete. She also submitted receipts (MP #63, #65, #66) showing that she had purchased paint and painting supplies at a cost of \$82.53.

Dishwasher

24. The landlord submitted a photograph (MP #83), which she stated was taken from the tenants' Facebook page, showing the tenants' baby sitting on the dishwasher door while it was opened. The landlord stated that she inspected the dishwasher after the tenants moved out and she discovered that the brackets which secured the dishwasher to the cabinets were bent and she submitted a photograph showing those brackets (MP #82).
25. The landlord stated that it took her 10 minutes to straighten those brackets and she also claimed that she decided to switch out the dishwasher from the rental unit with the one from her own home as she had concerns that the damaged dishwasher may leak.
26. The landlord stated that she was not seeking any compensation for the costs she incurred in repairing the dishwasher or replacing it with the one from her own home.

Cupboard doors

27. The landlord stated that the cupboards in the kitchen were only 4 years of age and she claimed that when the tenants moved in they were in good condition and there were no scratches on them.
28. At the hearing, the landlord submitted photographs (MP ##82-104) showing these cupboards after the tenants moved out and she pointed out that there were numerous chips and scratches found on the finish. The landlord suggested that this damage was caused by the tenants' children and recounted an incident when she had visited the rental unit and witnessed one of the tenants' children banging his toy bicycle against the cupboards.
29. The landlord stated that she had the damaged areas of the cupboards refinished after the tenants vacated and she testified that she had paid \$316.25 to [REDACTED] to have that work carried out. In support of that claim she submitted a quote she had received from that company for that amount (MP #105).

Repair window screen

30. The landlord submitted 2 photographs (MP #106, #107) showing the screen on the window for the back door and she pointed out that it was ripped. She speculated that this damage was caused by the tenants' dogs.
31. The landlord stated that she had this screen repaired at [REDACTED] at a cost of \$1.61 and she submitted that receipt at the hearing (MP #108).

Weather stripping

32. The landlord stated that the weather stripping on both the front and back doors was damaged during this tenancy and she submitted photographs showing that damage at the hearing (MP ##29-32, #54). The landlord stated that this damage was likely caused by the tenants' dogs as there were also scratches evident in the trim in those areas.
33. The landlord stated that she paid \$20.00 in cash for replacement weather stripping but claimed that she received no receipt for that payment.

Door knob

34. The landlord submitted a photograph showing that a door knob was missing from a cabinet door. She purchased 2 replacements knobs at a cost of \$14.70 and she submitted the receipt at the hearing (MP #110).

The Tenants' Position

Back Deck

35. Tenant2 stated that although it did happen occasionally, it was not their practice to allow their dogs to urinate or defecate on the deck and the dogs were not trained to do so.
36. Tenant2 stated that he had also pressure-washed the back deck prior to vacating the unit and he submitted his own photographs at the hearing showing that same deck (HL ##2-4) and pointed out that it was left in good condition. [REDACTED], the tenants' witness, corroborated tenant2's claim that he had pressure-washed the deck before he vacated and the other witness, [REDACTED], testified that she saw no dirt on the deck.
37. Tenant1 acknowledged that there was some outdoor mildew on the deck but she argued that it cannot be attributed to them and she pointed out that they had kept a pool, a barbeque and some chairs on the deck in the area identified by landlord.
38. Tenant2 acknowledged that he had nailed 2 boards into the gate but he claimed that it would take no more than 5 minutes to remove them. He claimed that the landlord was aware that he had nailed those boards into the gate and she never complained about it during their tenancy. He stated that he offered to remove the boards and repair the gate before he vacated but the landlord would not give him permission.

Cleaning

39. Tenant1 stated that the unit was "perfectly" clean when she moved out and tenant2 stated that it was so clean one "could eat off the floor". In support of that contention, the tenants' representative submitted 81 photographs at the hearing showing the condition of the unit on 16 September 2018. She pointed out that these photographs show that the unit was left in a very clean state when the tenants vacated.
40. The tenants' representative also submitted letters (HL #86, #87) from [REDACTED] and [REDACTED] in which they declare that the unit was left in a clean state. [REDACTED] was called as a witness and she testified that she had spent 2 days cleaning the unit before the tenants vacated and [REDACTED] claimed that the unit could not have been any cleaner.

Plastering and painting

41. Tenant1 acknowledged that there were a few chips and scratches in the walls throughout the unit, but she pointed out that she lived in the unit for a full year with her children and argued that the landlord ought to have expected that there would be some minor wear. She claimed that the damage noted by the landlord

did not exceed the standard of normal wear and tear and she claimed that the landlord had failed to establish that this damage was caused deliberately.

Dishwasher

42. Tenant1 stated that the dishwasher worked perfectly during their tenancy.

Cupboard doors

43. Tenant2 pointed out that these doors were already 3 years of age when the tenancy began and they had already suffered some wear. He suggested that the damage seen in the photographs ought to be chalked up to normal wear and tear and he further claimed that he would have repaired that damage had he been given enough time.
44. Tenant1 acknowledged that the damage was likely caused by her children and she admitted that they do play rough. Tenant1 and the tenants' representative both stated that the costs the landlord was seeking here were fair and they did not contest this portion of her claim.

Repair window screen

45. Tenant1 acknowledged that this damage occurred during their tenancy and she claimed that the damage may have been caused by her children. Tenant2 claimed that the damage was not deliberate.
46. Tenant1 and the tenants' representative did not contest the costs the landlord was seeking here and expressed surprise at how inexpensive it was to repair a window screen.

Weather stripping

47. Tenant2 acknowledged that their dogs had caused the damage to the weather stripping on the front door. He argued, however, that the weather stripping on the back door was not caused by their dogs but was rather caused by the door itself as it was misaligned.

Door knob

48. Tenant1 agreed that that they are responsible for the costs of replacing the door knob and did not dispute the costs the landlord is seeking here.

Analysis

49. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

10.(1)2. Obligation of the Tenant -The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item (s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

47. (1) Upon hearing an application, or where a hearing is not held under subsection 38(5), the director may make an order,

(a) determining the rights and obligations of the landlord and tenant;

(b) directing the payment or repayment of money from the landlord to the tenant or from the tenant to the landlord;

(c) requiring the landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring the landlord to compensate the tenant or the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of this Act or the rental agreement

50. With respect to the deck, I was not persuaded that the landlord is entitled to any compensation for the costs of cleaning it. It was tenant2's corroborated testimony that he had pressure-washed the deck before he vacated and not enough evidence was presented at the hearing to establish, on the balance of probabilities, that the mildew shown in the photographs was caused by the tenants' dogs. It was not disputed that the tenants had nailed 2 boards to the gate of the deck and I find that the landlord is therefore entitled to compensation for 1 hour of her personal labour to remove those boards: \$19.15.

51. With respect to the cleaning of the interior of the rental unit, I also find that, for the most part, the landlord had failed to establish her case. The photographs submitted by the tenants show that all of the rooms in the unit were left in a clean

state and their witnesses testified that they had spent 2 days cleaning before the tenants vacated. The landlord, however, only presented 3 photographs in support of her claim along with a receipt, dated 2 months after the tenancy had ended. I find that the landlord is entitled to compensation for 2 hours of her labour to clean the dirty wall shown in the photograph and to clean the curtains. I also find that she is entitled compensation for an additional 2 hours of her labour to dispose of the items which were abandoned at the rental unit. As such, her claim succeeds in the amount of \$76.60 (4 hours x \$19.15 per hour).

52. Regarding the plastering and painting, I accept the landlord's claim that she was required to repaint some walls and trim after the tenants vacated. Some of the damage shown in the photographs, however, does not exceed the standard of normal wear that would be expected after a 1 year tenancy. It also has to be borne in mind that rental units are typically painted every 3 to 5 years as a resulted of normal wear and tear and as this unit was last painted 4 years ago, painting would soon be required anyways. Nevertheless, there is some damage that does appear to exceed the standard of normal wear for which I am of the view that the landlord is entitled to some compensation. In particular, some of the trims and baseboards are heavily scratched and there are some deep gouges in the walls. As the landlord's total claim for painting and plastering came in at \$417.66 (\$335.13 for labour (17.5 hours x \$19.15 per hour) and \$82.53 for materials) I find that \$100.00 is a fair award.
53. I also find it probable, given that the door trim was heavily scratched, that the tenants' dogs had also caused damage to the weather stripping and I find that the landlord is entitled to the \$20.00 she is seeking here.
54. Regarding the cupboard doors, the window screen and the door knob, as the tenants did not contest those claims I find that the landlord is entitled to the full costs she sought for these items: \$332.56 (\$316.25 + \$1.61 + \$14.70).

Decision

55. The landlords' claim for compensation for damages succeeds as follows:

• Deck	\$19.15
• Cleaning	\$76.60
• Painting and plastering	\$100.00
• Weather stripping	\$20.00
• Repair cupboards	\$316.25
• Repair screen	\$1.61
• Replace door knobs.....	\$14.70
Total.....	\$548.31

Issue 2: Security Deposit

56. The tenants submitted a receipt at the hearing showing that they had paid a security deposit of \$500.00 on 05 September 2017. As the landlords' claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

57. The landlord is entitled to the following:

- a) Compensation for damages \$548.31
- b) LESS: Security deposit..... (\$500.00)
- Total Owing to Landlord \$48.31

14 March 2019

Date


John R. Cook
Residential Tenancies Tribunal